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EXAMINER

JEFFERY, JOHN A

ART UNIT

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 11

Application Number: 09/939,993
Filing Date: August 27, 2001
Appellant(s): POLLACK, SHIRLEY

John G. Posa
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 27, 2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

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(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 1-7 and 13-15 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

DE 2,637,484	Germany	4-1978
3,836,750	Caruso	9-1974
1,660,802	Martin	2-1928
5,394,620	Chimera	3-1995

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-3, 5-7, 13, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 2,637,484 in view of Caruso (US 3,836,750). This rejection is set forth in prior Office Action, Paper No. 8.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE 2,637,484 in view of Caruso (US 3,836,750) and further in view of Martin (US 1,660,802). This rejection is set forth in prior Office Action, Paper No. 8.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE 2,637,484 in view of Caruso (US 3,836,750) and further in view of Chimera (US 5,394,620). This rejection is set forth in prior Office Action, Paper No. 8.

(11) Response to Argument

A. DE 2,637,484 is in the Same Field of Endeavor and is Therefore Analogous Art.

Ultimately, patentability in this case turns on the propriety of the combination of DE 2,637,484 (hereafter "DE '484") and Caruso under § 103(a). In this inquiry, the first issue is whether DE '484 is analogous art. The examiner contends that it is (Final

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Rejection, Pages 4-6), while Appellant argues it is not (Brief, Sec. VIIIA). The essential point of contention is that the examiner maintains that the relevant field of endeavor of the instant invention is broader than Appellant asserts. As will be explained in detail below, DE '484 is well within the field of endeavor and properly combinable with Caruso under § 103(a).

The examiner recognizes that he must determine what is "analogous prior art" for the purpose of analyzing the obviousness of the subject matter at issue. "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." (emphasis added.) *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). See also *In re Deminski*, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986); *In re Clay*, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992) ("A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem"); and *Wang Laboratories Inc. v. Toshiba Corp.*, 993 F.2d 858, 26 USPQ2d 1767 (Fed. Cir. 1993).

Here, although Appellant characterizes the instant invention in the preamble of independent claims as "[a] device for drying a moist region of a person's body" (claims 1 and 15) and "[a] forced air drier for drying a baby" (claim 6), Appellant's invention is--at bottom--an electrically heated air blower. Ultimately, the purpose of the invention is

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to produce a stream of heated air with a fan and an electric heating element (see, e.g., claim 15).

It is particularly noteworthy that the claims are apparatus claims--not method claims. Consequently, the terms "person's body" and the "baby" recited in the preambles of the independent claims are not structural elements of the claims. Rather, those terms merely set forth the intended use of the apparatus structure.

In general, a preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Here, the structure recited by the claims does not depend on the intended use clause of the preamble, but stands alone. Accordingly, the recited structure encompasses a wide variety of heated air blowers spanning numerous practical applications involving convection heating. Examples of such applications would be, *inter alia*, curing an adhesive, defogging a pane of glass, and drying deposited ink on a paper substrate. The relevant field of endeavor thus encompasses a variety of diverse technologies where a heated airstream is desirable. Therefore, one of ordinary skill in the art would reasonably consider the DE '484 reference as in the same field of endeavor as the instant invention--the production of heated air streams. The relevant field of endeavor is simply not limited to drying a person's body.

Therefore, the relevant field of endeavor is electrically heated air blowers generally and is not limited to body dryers as Appellant asserts. Despite their diverse applications, heated air blowers possess (1) overall similarities in structure (i.e., a housing containing a fan and heater therein), and (2) a heated airflow producing a convective heating effect upon the workpiece to be heated. Thus, in view of these general similarities in structure and convective heating effect, one of ordinary skill in the art would reasonably refer to a variety of heated air blower structures when confronted with the problem of drying a moist region on a person's body with a heated air blower. In this case, like the instant invention, DE '484 is simply an electrically heated air blower and is therefore analogous art to which one of ordinary skill in the art would reasonably refer.

B. Although the Heated Airstream of DE '484 is Used for Deicing Vehicle Door Locks, the Apparatus Structure is Nonetheless in the Same Field of Endeavor.

DE '484 is a small, battery-powered handheld air heater intended to deice frozen door locks (Translation of DE '484 (hereafter "Translation"), P. 2). The device is powered by two 1.5 V batteries (Translation, P. 3). The fan, driven by a "mini motor," (Translation, P. 3) directs air heated by a battery-powered electric heating element onto the desired area to be heated (here, a door lock).

On Page 4, first full paragraph of the Brief, Appellant argues that that because the DE '484 Derwent abstract suggests that the device resembles a "hand torch," it purportedly "suggests a device that includes a hot flame or is capable of producing heat as hot as fire such that something may be caused to burn." However, the examiner

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respectfully submits that this assertion is not only mere speculation with no substantive basis, but actually misconstrues the reference.

First, the referenced phrase “hand torch” does not appear in the Translation, but only appears in the Derwent abstract. Moreover, Derwent personnel authored the referenced abstract. Because Derwent is a British company¹ whose employees are predominantly British, Derwent abstracts will sometimes use familiar British phrases that are not commonly used in U.S. English.

In the United Kingdom, the term “torch” actually refers to a flashlight.² Therefore, a proper interpretation of the Derwent abstract is that the small handheld air heating device of DE ‘484 resembles a flashlight—not a device capable of producing flames as Appellant asserts. Also, the adjective “hand” modifying “torch” in the Derwent abstract means that the “torch” (i.e., flashlight) is adapted to be held in the user’s hand.

Furthermore, the examiner’s interpretation of “torch” is reinforced by the DE ‘484 Translation on P. 3. In the “Technical Description” section of the Translation, the cylindrical housing of the air heater is described as “not quite unlike a small pocket flashlight.” Moreover, the Translation is silent regarding Appellant’s theory regarding the production of flames or heat as “hot as fire.” Therefore, the only reasonable construction of the term “torch” as used in DE ‘484 is “flashlight.” Indeed, any other

¹ See generally Derwent - Frequently Asked Questions, at <http://www.derwent.com/derwentfaq/#twelve> (last visited Apr. 3, 2003).

² See American-British/British-American Dictionaries, at <http://www.travelfurther.net/dictionaries> (last visited Apr. 1, 2003) (noting the equivalency of the British term “torch” with “flashlight” in U.S. parlance). See also The BG-Map English (British) - American Dictionary, at <http://www.bg-map.com/us-uk.html> (last visited Apr. 1, 2003); The Gorge Outdoors Catalog (U.K.), at http://www.thegorgeoutdoors.co.uk/acatalog/The_Gorge_Outdoors_Torches_and_lamps_37.html (last visited Apr. 1, 2003) (offering a battery-operated, aluminum “hand torch” for sale with illuminating LED bulbs).

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construction would be counter to the express teachings of the reference. Thus, Appellant's theory that the term "torch" somehow suggests producing flames or heat "as hot as fire" in DE '484 is mere speculation and actually repugnant to the reference.

Although the preferred embodiment of the air heater of DE '484 is for deicing door locks, its heated airstream would be equally effective in a myriad of diverse practical applications where a heated airstream is needed. Examples of such applications have been previously noted in Section A of this Answer. The relevant field of endeavor thus encompasses a variety of diverse technologies where a heated airstream is desirable. Therefore, one of ordinary skill in the art would reasonably consider the DE '484 reference as in the same field of endeavor as the instant invention--the production of heated air streams.

C. The Device of DE '484 is Capable of Performing the Intended Use of the Instant Invention.

In the instant claims, the "workpiece" to be heated (i.e., the "body" or "baby" to be dried) does not add a structural limitation to the claims, but merely recites a desired intended use of the apparatus. It is well settled that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Also, a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed

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apparatus from a prior art apparatus satisfying the structural limitations of the apparatus claimed. See *Ex parte Masham*, 2 USPQ 2d 1647 (1987).

To pass muster under *Casey*, the critical issue is whether the structure of DE '484 would be capable of performing the intended use of the instant invention. The instant invention's intended use is recited in the respective preambles of the independent claims--namely, (1) "drying a moist region of a person's body," and (2) "drying a baby."

As noted in the DE '484 Translation, the air heater of DE '484 is only 100 mm long and 30 mm in diameter, and is powered by two 1.5 volt batteries. (Translation, P. 3.) As is known in the art, the dissipated power of a resistive electric heating element is determined from Ohm's Law ($P = V^2 / R$). Thus, given the small voltage powering the electric heater in DE '484 (three volts--assuming the 1.5-volt batteries are in series), for a typical heating element resistance, the dissipated power will be relatively small.

Moreover, for ice to melt, the air temperature need only be above 32 degrees F. Although DE '484 is silent regarding the precise airflow temperature, given (1) DE '484's relatively low electric voltage provided solely by 1.5-volt batteries, (2) the low temperatures needed to melt ice, and (3) the small, pocket-size form factor of the device, it is reasonable to presume that its airflow temperature for occasional deicing purposes would be relatively low, but above 32 degrees F. In fact, demanding an extremely high air temperature from such a small device would require an increased current flow and quickly drain the 1.5-volt batteries. In short, the ice-melting airflow issuing from the small, flashlight-like device of DE '484 is capable of drying a moist

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region on the body, as well as a baby. Accordingly, the structure is within the same field of endeavor as the instant invention.

Even if, for the sake of argument, the structure of DE '484 could somehow produce an extremely high temperature, its structure would still be suitable for drying the human body. As noted above, the touchstone of Casey is capability.

As is well known in the art, convection heat transfer intensity is dependent upon, and inversely proportional to, the distance between the heater and the workpiece. That is, as the distance between the convection heater and the workpiece increases, the heated airflow will require more time to travel to the workpiece, thus losing heat prior to contacting the workpiece. Thus, even if the DE '484 device produced a high temperature, merely increasing the distance between the device and the body to be dried by simply moving it farther away would achieve the desired result.

D. Even if DE '484 is not in the Same Field of Endeavor, it is Reasonably Pertinent to the Problem Appellant is Trying to Solve

Even if, for the sake of argument, DE '484 could somehow not be considered to be in the same field of endeavor as the heated air blower of the instant invention, it is still reasonably pertinent to the problem Appellant is trying to solve under the second prong of *In re Deminski*, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986). Appellant's problem involves blowing heated air over a moistened area of the body for drying.

For the same reasons as outlined in Sections A - C above, the small, handheld flashlight-like air heater of DE '484 is reasonably pertinent to the problem Appellant is trying to solve. Given (1) DE '484's relatively low electric voltage provided solely by 1.5-

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volt batteries, (2) the low temperatures needed to melt ice, and (3) the small, pocket-size form factor of the device, it is reasonable to presume that its airflow temperature for occasional deicing purposes would be relatively low, but above 32 degrees F. In fact, demanding an extremely high air temperature from such a device would require an increased current flow and quickly drain the 1.5-volt batteries. In short, the ice-melting airflow issuing from the small, flashlight-like device of DE '484 is capable of drying a moist region on the body, as well as a baby. The structure therefore is reasonably pertinent to the problem Appellant is trying to solve -- blowing heated air from a heated air blower to achieve a desired drying result.

E. There is Ample Motivation to Combine DE '484 and Caruso.

In response to Applicant's argument that there is no suggestion to combine the references, the Examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya*, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as whole would suggest to one of ordinary skill in the art. *In re McLaughlin*, 170 USPQ 209 (CCPA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA 1969).

In this case, Appellant argues that because there is allegedly no suggestion in DE '484 that blocking the outlet is a problem, one of ordinary skill in the art would therefore not turn to the venting means of Caruso as a solution. However, as will be explained below, DE '484 is equally susceptible to the same outlet blockage problem contemplated by Caruso; thus, the remedy suggested by Caruso would be applicable to DE '484.

As is well known in the art, all air blowers have outlets to enable air to exit from the blower. And, outlets can be blocked by an obstruction caused by either (1) placing the outlet too close to, or directly on, the workpiece, or (2) otherwise interfering with the free flow of air by a foreign object in or near the outlet. Absent some means to vent air around the blockage, the air will have nowhere to go and result in back pressure problems as recognized and discussed in Caruso (col. 3, lines 39-47).

Caruso provides an effective solution to this potential problem by providing auxiliary ports 86 adjacent the outlet which provide an alternate path for air in the event the main outlet is blocked. Because Caruso is also a heated air blower, it is well within the same field of endeavor as DE '484 and is therefore analogous art.

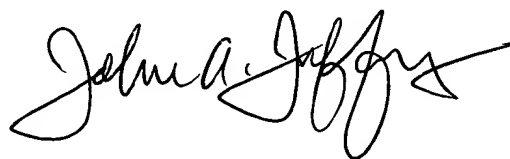
Therefore, Caruso's venting technique is applicable to DE '484. Because DE '484 has a single outlet nozzle that aspirates the entire heated airflow stream towards the workpiece, the DE '484 heater is equally subject to outlet blockage and concomitant back pressure problems. As with Caruso, absent some means to vent the blocked air, inevitably back pressure will result potentially destroying the device. Therefore, one of ordinary skill in the art would look to the teachings of Caruso in fashioning a remedy to

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vent the air in the event of an outlet blockage. Accordingly, one of ordinary skill in the art would be motivated to provide auxiliary ports adjacent the outlet of DE '484 to provide an alternate airflow path in the event the outlet was blocked. The combination is proper.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



John A. Jeffery
Primary Examiner
Art Unit 3742

jaj
April 3, 2003

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Attachment -- Translation of DE 2637484

PTO 02-4937
German

Document No. 26 37 484

Heating Rod for Iced Car or Locks
[Heizstab für verseiste Autotürschlosser]

Hans-Reinhard Mintgen

UNITED STATES PATENT AND TRADEMARK OFFICE
Washington, D.C. September 2002

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Country : Germany

Document No. : 26 37 484

Document Type : Patent Application Laid Open to Inspection

Language : German

Inventor : Hans-Reinhard Mintgen

Applicant : Hans-Reinhard Mintgen

IPC : E 05 B 17/00

Application Date : August 20, 1976

Publication Date : April 20, 1978

Foreign Language Title : Heizstab fur verseiste
Autoturschlosser

English Title : Heating Rod for Iced Car or Locks

CLAIMS

PREAMBLE:

1) Heating rod for iced car locks, heating coil located inside fan and mini motor, battery.

CHARACTERIZING PART:

Metal housing with closing lid that supports the switch. Inside, heating coil to generate hot air, propeller to transport hot air up into the iced door lock of the vehicle through lower opening. The process of thawing the inhibiting ice takes place in the lock.

PREAMBLE OF SUBCLAIM:

2) Heating rod for iced car locks according to claims 1).

CHARACTERIZING PART OF SUBCLAIM:

By means of switch in closing cap, mini motor - that causes the propeller to rotate fast - is started up simultaneously with the heating coil.

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SPECIFICATION:

PURPOSE:

The heating rod provides for fast, clean and completely harmless removal of the ice for the vehicle's door lock. It will be

¹ Numbers in the margin indicate pagination in the foreign text.

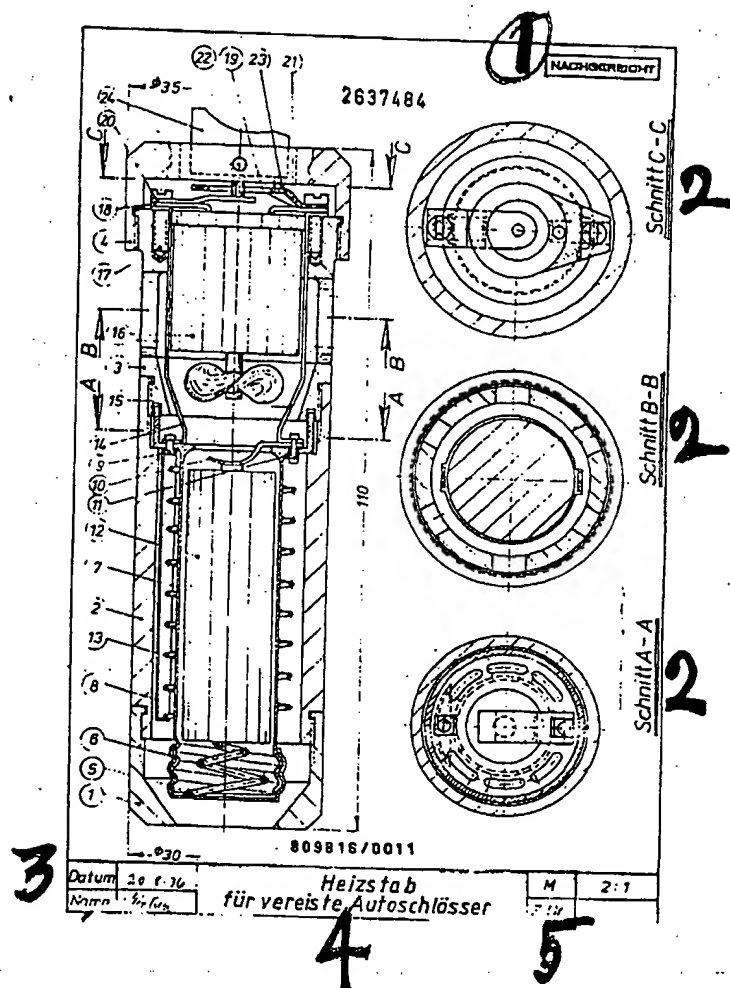
particularly worthwhile in the Nordic countries but also domestically for cars that are parked outdoors in the winter. In contrast to commercially available lubricating sprays, the heading rod's function involves a completely normal occurring melting procedure.

TECHINICAL DESCRIPTION:

A sheet metal cylinder, of about 30mm ø, about 100 mm long (not quite unlike a small pocket flashlight) has at one end, an exchangeable rubber cuff that can be slipped on. This exchangeability is required because in some vehicles the door locks are made in different version.

At the other end of the cylinder there is a small flip switch that establishes the contact of the following functions:

- 1) Heating the heating coil located inside the cylinder.
- 2) Simultaneous fast rotation movement of the small propeller that ventilates the hot air into the slit of the lock (driven by a mini motor). This require 2 1.5 v mono cells that are attached to the side of the cylinder in two cavities.



KEY:

1. Submitted subsequently
2. Profile
3. Date
4. Heating rod for iced car locks
5. Number

(51)

Int. Cl. 2:

E 05 B 17/00

(19) BUNDESREPUBLIK DEUTSCHLAND

DEUTSCHES



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Offenlegungsschrift 26 37 484

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(22)

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20. 8. 76

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Offenlegungstag:

20. 4. 78

(30)

Unionspriorität:

(32) (33) (31) —

(54)

Bezeichnung:

Heizstab für vereiste Autotürschlösser

(71)

Anmelder:

Mintgen, Hans-Reinhard, 4600 Dortmund

(72)

Erfinder:

gleich Anmelder

4937
PTO 2002-4684
S.T.I.C. Translations Branch

DE 26 37 484 A 1

Patentansprüche

für P 26.37 484.5, Heizstab für vereiste Autotürschlösser.

Oberbegriff:

- (1) Heizstab für vereiste Autoschlösser, innen befindliche Heizspirale, Ventilator und Minimotor, Batterie.

Kennzeichnender Teil:

Metallgehäuse mit Abschlußdeckel, der den Schalter trägt. Innen Heizspirale zur Heißluftentwicklung, Propeller zum Heißlufttransport ins vereiste Türschloß des Fahrzeugs durch untere Öffnung. Im Schloß vollzieht sich der Abtauvorgang des hemmenden Eises.

Oberbegriff des Unteranspruchs:

- 2) Heizstab für vereiste Autoschlösser nach Anspruch 1).

Kennzeichnender Teil des Unteranspruchs:

Durch Schalter in Abschlußkappe werden Minimotor, der den Propeller in schnelle Rotation versetzt, sowie die Heizspule gleichzeitig in Funktion gebracht.

Dortmund, den 9. 1.1978

Patentanwalt
Dortmund 1
W. Müller

809816/0011

Beschreibung des Heizstabe

für vereiste Autotürschlösser

Verwendungszweck:

Der Heizstab ~~XXXXXX~~ sorgt für schnelle, saubere und für das Türschloß des Fahrzeugs völlig unschädliche Entfernung des Eises. Er wird sich besonders in den Nordländern bewähren, aber auch im Inland bei im Winter draußen stehenden Autos. Im Gegensatz zu den im Handel befindlichen schmierenden Sprays, handelt es sich bei der Funktion des Heizstabes um einen völlig normal verlaufenden Abschmelzungs Vorgang.

Technische Beschreibung:

Ein Blechzylinder, ca. 30 mm ϕ , ca. 100 mm lang, (einer kleinen Taschenlampe nicht unähnlich) trägt an einem Ende eine auswechselbare, aufstülpbare Gummimanschette. Die Auswechselbarkeit ist erforderlich, da bei manchen Fahrzeugen die Ausführungen der Türschlösser differieren.

Am anderen Ende des Zylinders befindet sich ein kleiner Kippschalter, der den Kontakt für folgende Funktionen auslöst:

- ①) Erwärmung der im Innern des Zylinders befindlichen Heizspule.
- 2) Gleichzeitige schnelle Rotationsbewegung eines kleinen Propellers, der die Heißluft in den Schlitz des Schlosses ventiliert. (Angetrieben durch einen Kleinstmotor.) Benötigt werden 2 Monozellen 1,5 V, die seitlich vom Zylinder in zwei Hohlräumen angebracht sind.

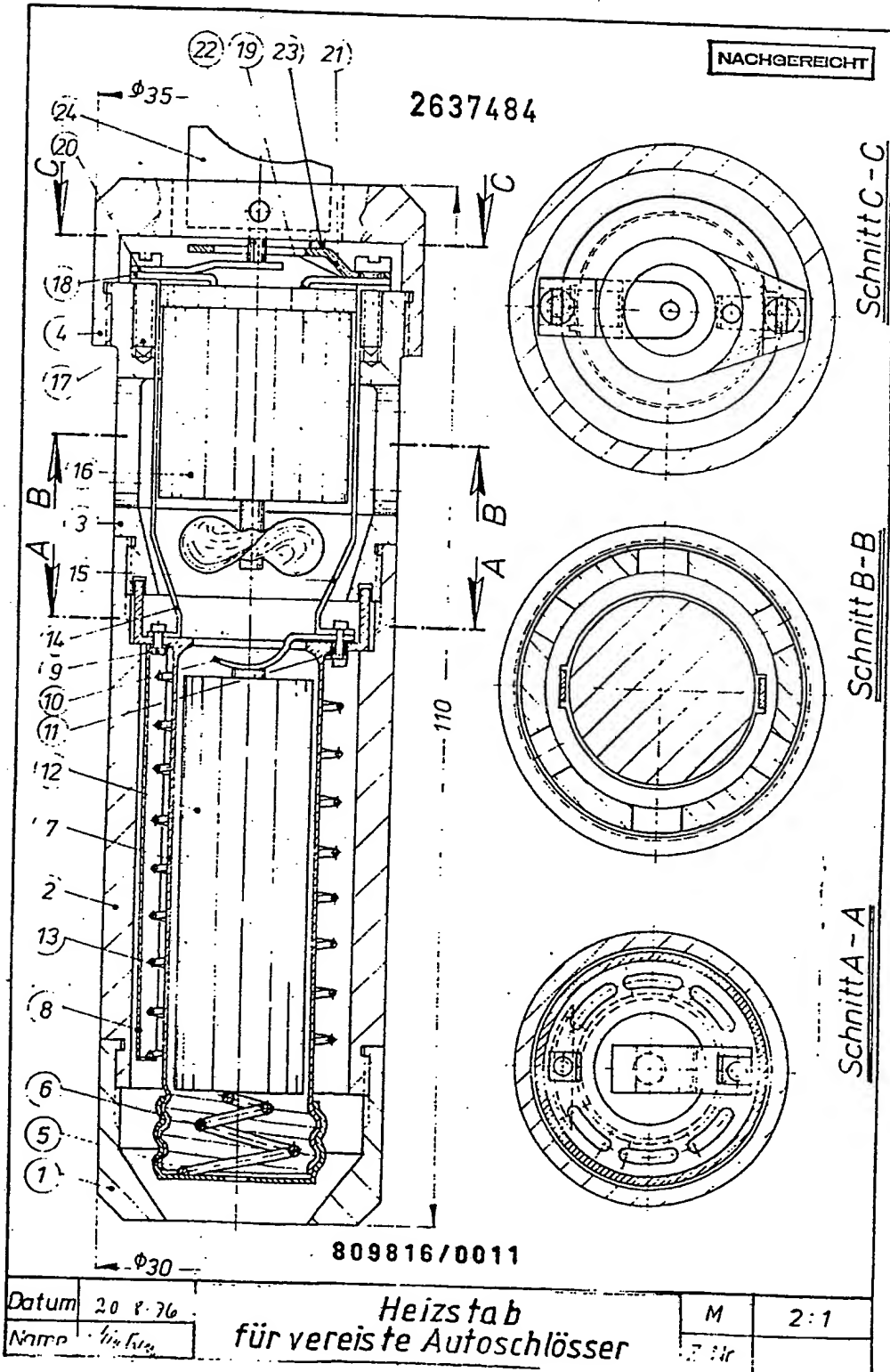
Des weiteren siehe Zeichnung!

Heinz Dübber

809816/0011

Nummer: 26 37 484
 Int. Cl.²: E 05 B 17/00
 Anmeldetag: 20. August 1976
 Offenlegungstag: 20. April 1978

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